In the High Court of Punjab and Haryana at Chandigarh.

F.A.O.No.2246 of 2006.

Date of decision:1.11.2006.

Balwinder Singh.

` ...Appellant.

Versus

Surinder Kaur and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Ms.Naiya Gill, Advocate for the appellant.

Mr.Tarun Khanna, Advocate for respondent No.1.

None for respondent Nos.2 and 3.

...

Judgment.

S. N. Aggarwal,J.

Elections for the office of Panches of Gram Panchayat of village Jhallian Kalan, Tehsil and District Rupnagar had taken place on 29.6.2003. There were in all 7 number of Panches in village Jhallian Kalan (Jhallian Baddi). The break up of the same was under:-

Total	7
General	4
Women	1

Scheduled Castes 1

Scheduled Caste Woman 1

Balwinder Singh, appellant, Surinder Kaur, Nachhatar Singh, Harbans Singh and Kulwant Singh,respondents had contested the elections of Panches amongst others against general category. The votes were counted. The appellant and respondent Nos.1 to 4 secured the votes given in the following table:-

Surinder Kaur, respondent No.1.	126 votes
Nachhatar Singh respondent No.2	77 votes
Harbans Singh,respondent No.3	76 votes.
Kulwant Singh, respondent No.4	76 votes.
Balwinder Singh,appellant.	30 votes.

Considering the candidature of Surinder Kaur respondent against the seat reserved for (Women) general category, the appellant and respondent Nos.2 to 4 were declared elected against the Panches of general category by respondent No.5, Returning Officer.

Surinder Kaur, respondent No.1 filed the Election Petition. Numerous grounds were pleaded by her. The said petition was contested by the appellant and respondent Nos.2 and 3 who filed written reply. Respondent No.5 had also filed written reply.

The learned Election Tribunal considered the matter and accepted the Election Petition vide order dated 12.1.2006 and held that Surinder Kaur,respondent No.1 was a general category candidate and did not contest against the seat reserved for the women of general

category. Accordingly, Surinder Kaur respondent No.1 was declared elected having secured highest number of votes while the election of appellant Balwinder Singh was set aside as he had secured lesser number of votes than others.

Hence, the present appeal.

The submission of learned counsel for the appellant was that Surinder Kaur had filed nomination papers against reserved post of Lady Panch(General Category). Therefore, she could not contest against the post of Panch meant for general category. Reference was made to the instructions dated 26.6.2003 issued by the Government of Punjab, Department of Rural Development and Panchayats (Election Branch) according to which the instructions issued earlier on 20.4.2003 were withdrawn. Hence, it was submitted that the votes polled by Surinder Kaur respondent can be considered only against the seat reserved for Lady Panch of general category and not against the general category (men).

This submission was contested by the learned counsel for respondent No.1. It may be noticed that originally the Government of Punjab had issued instructions in the circular dated 18.6.2003 as under:-

1. Men and women of Scheduled Caste category can contest against the general category seat.

2. Men and women (both of reserve category and general category) could contest the elections against

general category seats.

3. Women of reserve category could contest election against the reserve category seats meant for men. Similarly, the women of general category could contest the election against general category seats.

4. If any men or women of reserve category secures more votes than the women or men of general category, then the women or men of reserve category shall be declared elected and the men or women of reserve category securing lesser votes shall be considered as having been elected against the reserve category seats.

The above said instructions had come up for consideration before this Court in the judgment reported as **Asha Rani Versus State of Punjab,** Civil Writ Petition No.11633 of 1998 decided on 16.7.2001. Thereafter the Government of Punjab had issued fresh instructions vide circular dated 26.6.2003 according to which the fourth instruction reproduced above was withdrawn and it was clarified as under:-

"It is clarified that if some one files nomination paper for the post of Panch (reserve category), he cannot be declared elected for the general category, in spite of his might securing more votes than the general category candidates.

On the basis of these instructions, the submission of learned counsel for the appellant was that since Surinder Kaur,respondent No.1

had filed nomination papers as against the seat of Lady Panch, therefore, her votes cannot be counted against the seats of Panches of general category meant for men.

This submission has been considered. It fails on two counts. First of all, the interpretation given by the learned counsel for the appellant to these instructions is not tenable. The Government had issued four directions in separate paragraphs in the letter dated 18.6.2003 but only para No.4 was withdrawn vide circular dated 26.6.2003 (Annexure A-1). Para No.4, as discussed above, was that if a woman or man of reserve category had secured more votes than the woman or man of general category, then the reserve category candidate was to be declared elected. These instructions contained in para No.4 of the instructions dated 18.6.2003 had nothing to do with the contest between women of general category and men of general category. It was only qua the candidates of reserve category (Scheduled Castes) versus general category. Therefore, withdrawal of instruction contained in para No.4 of circular dated 18.6.2003 does not help the appellant at all. Rather, para No.3 of the instructions dated 18.6.2003 which remained intact even after the issuance of instructions dated 22.6.2003 proves that the women of general category can contest the election against the general category seats. It means, therefore, that Surinder Kaur was entitled to contest elections either against the seat meant for general category women or against the general category seats.

There was one seat reserved for women of general category

for the Gram Panchayat of village Jhallian Kalan alias Jhallian Baddi. Therefore, it was necessary to examine if Surinder Kaur had filed nomination papers against the seat meant for women of general category or against the general category only.

The nomination paper filed by Surinder Kaur respondent No.1 reveals that she had filed her nomination paper against the seat of general category. The affidavit filed by Surinder Kaur reveals that she had written the word **Panch** against the column as to the seat she wanted to contest. Even in the proforma given by her for furnishing information which was prescribed under Section 11(e) of the Punjab State Election Commission Act,1994 (in short the PSEC Act,1994) against the **column election to the,** she had filled the words **Panch (G).** It means, therefore, that she had not filed nomination papers for the seat reserved for general category (women).

Learned counsel for the appellant made reference to the nomination form in which the column was **name of the office** and the words written against this column by respondent No.1 were **Panch General Lady**. It was submitted that Surinder Kaur has applied against the post meant for women of general category.

This submission has been considered. It does not weigh with this Court. The word **Lady** was mentioned by her to indicate that she was a woman but she had not applied for the seat meant for women of general category.

I have examined the nomination papers filed by other

women also against the post of Panches of Gram Panchayat in village Jhallian Kalan. For example, the nomination papers filed by Harpal Kaur. Against the column **name of the office,** she had filled **Lady Panch (General)**. In the proforma ,referred to above, against the column **election to the**, Harpal Kaur had filled the word **Lady Panch** but Surinder Kaur respondent has no where used the words **Lady Panch.** Similarly, one Paramjit Kaur had filed nomination paper for the office of Panch of Gram Panchayat of village Jhallian Kalan. She had specifically mentioned that she was contesting for the office of **Lady Panch (General Category).** In the proforma with the nominations and in the affidavit, it was specifically mentioned by her that she was contesting against the office of **Lady Panch.** As discussed above, Surinder Kaur,respondent had not filled the words **Lady Panch** in any document filed by her. Rather, in the affidavit she had filled the word **Panch** while in the proforma, she had filled the word **Panch (G)** and in the nomination paper also, she had not filled the word **Lady Panch.** Merely because she had written words **Panch (General) Lady,** it was to be seen in the context of other documents filed by her which clearly indicate that the word **Lady** was used by her only to identify her status as a woman. She had not filed the nomination paper for **Lady Panch.** Rather, the other two documents filed by her reveal that she had filed her nomination paper against the seat of general category.

Keeping in view the discussion held above,the order passed by the learned Election Tribunal does not suffer from any illegality or

infirmity. The same is up-held.

There is no merit in the present appeal and the same is dismissed.

November 1 ,2006. (S. N. Aggarwal)
Jaggi Judge